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Docket Management System
U.S. Department of Transportation
400 Seventh Street, SW, Room Plaza 401
Washington, D.C. 20590-0001

Docket No. FAA-2002-13378 - 3684
**Notice of Proposed Rulemaking: Reports by Carriers on
Incidents Involving Animals During Air Transport**

Ladies and Gentlemen:

The following are comments of the American Kennel Club (AKC) on the above referenced notice of proposed rulemaking.

The AKC's Interest in the Proposed Rulemaking

The American Kennel Club, Inc. was established in 1884 and is a not-for-profit corporation specifically chartered by the New York State legislature by Act of May 18, 1908. The AKC's mission is to:

- Maintain a registry for purebred dogs and preserve its integrity;
- Sanction dog events that promote interest in, and sustain the process of, breeding for type and function of purebred dogs;
- Take whatever actions necessary to protect and assure the continuation of the sport of purebred dogs.

The AKC is the world's largest purebred dog registry and sanctioning body for canine competitive and performance events. In 2001 the AKC registered more than 1,081,000 individual purebred dogs and 462,000 litters from AKC-registered sires and dams. Nearly 300,000 persons annually register one or more litters of puppies with the AKC.

The AKC's principal constituency is the purebred dog fancy – those persons who actively participate in the sport of purebred dogs, including owners, breeders, judges and dog event participants. The AKC does not have individual members, but rather is a “club of clubs”. In 2001 the AKC's membership consisted of 564 members clubs in every state of the United States. The AKC's constituency also consists of approximately 4,000 affiliated non-member dog clubs that conduct events under AKC rules. The AKC's member and affiliated clubs have a membership of approximately 250,000 persons.

The AKC and its constituency rely heavily on air transport of dogs. Dogs travel by air to engage in competitive and performance events. In 2001 there were more than 2,000,00 entries in canine events held under AKC rules. Without convenient, affordable and safe air travel, entries at many national and international canine competitive and performance events would be seriously curtailed. Dogs also travel by air for the purpose of breeding or being bred. The availability of convenient, affordable and safe air travel contributes to a national gene pool for breeders, rather than restricting breeders to the breeding stock that is available within driving distance of their homes. Dogs and puppies travel by air for the purpose of relocating to new homes and new owners. Dog owners sometimes travel with their dogs purely for pleasure. In short, convenient, affordable and safe air travel is part of the fabric of dog competition, breeding and ownership in the United States.

Because of the importance of air travel for dogs to the AKC's constituency, the AKC has had a long commitment to safe air travel for dogs and to involvement in public policy issues related to air transport of dogs. There should be no doubt that the AKC is absolutely committed to safety in air transport for dogs. We strongly support necessary and effective legislation and regulations to assure safe transport of dogs by all modes of travel. For many years the AKC has been active in the dissemination of publications and information to the public about safe travel for dogs, and involved in regulatory and legislative debates pertaining to transport of dogs.

The AKC and its constituency was active in the public debate following the introduction of S. 1193 in the 106th Congress which eventually gave rise to the inclusion of Sec. 710 in the Wendell H. Ford Aviation Investment Act for the 21st Century (AIR-21). It is the AKC's experience that when carriers and the shipping public follow current regulations and guidelines, air transport of dogs is very safe, in fact, far safer and less stressful than alternative means of surface travel. It is the AKC's experience that the claims of large numbers of incidents of loss, injury and death of dogs and other animals during air transport claimed by the proponents of S. 1193 were vastly overblown and inaccurate, and were grounded in the proponents opposition to air transport of animals under any conditions, and to the purposes for which animals were transported, and were not primarily motivated by concern for the safety of the animals themselves.

The AKC supports the intent of Congress in enacting Sec. 710 of AIR-21:

The managers heard from animals rights activists and citizens who use airlines to transport animals. They have sharply differing views over the extent of the problem and the appropriate remedy. Accordingly, the Conference Report modifies the Senate provision to ensure that airlines will continue to carry animals while information is collected to determine whether there is a problem that warrants stronger legislative remedies. [emphasis added]

[House Report 106-513, March 8, 2000]

The above passage from the Manager's Report of AIR-21 makes clear that the purpose of enactment of Sec. 710 was *to gather information*, not to impose new regulatory obligations on air carriers. In recent years air carriers have increasingly been restricting and embargoing the transport of animals, in part because of intimidation from animal rights activists and in part because of the additional costs imposed by new regulations and the threat of new regulations and the perilous financial condition of air carriers. These restrictions have already imposed severe hardship on the public wishing to transport and travel with their animals. The AKC is very concerned that the FAA not contribute to furthering this trend through unnecessary and overly broad rulemaking.

The AKC's Comments on the Proposed Rulemaking

1. Introduction

The language of the proposed rule is overly broad in scope, and could be interpreted to impose obligations on carriers that the AKC is concerned could be difficult, expensive, or, in some cases, impossible as a practical matter, for air carriers to meet. At a minimum, since the costs of implementing carriers' obligations under this proposed rule will ultimately be borne by the shipping public, the AKC is concerned that the obligations under the rule as proposed could unreasonably increase the cost of shipping live animals. In addition, based on its past experience, the AKC is concerned that the practical effect of these obligations could be to induce more air carriers to forego carrying live animals. Thus, the parties that will be injured by an overly broad rule will be the public who seek to ship live animals by air.

Carriers who have emerged in the "low cost" air transport market, notably Southwest Airlines, already refuse to carry live animals. Presumably they are unwilling to go to the expense and incur the management burden of putting in place the procedures, training, etc. that would be necessary to comply even with existing regulations

governing the shipping of live animals. The AKC believes that unless any new rules are reasonable, more airlines will be induced to follow the "model" of Southwest.

We note that air transport of animals is not now unregulated. The Animal and Plant Health Inspection Service (APHIS) has extensive regulations at 9 C.F.R. Part 3 pertaining to the transportation of animals. APHIS also maintains a field staff which inspect carriers for compliance with its regulations and investigate complaints. The provision of Sec. 710 of AIR-21 will be layered on top of this existing regulatory structure.

The comments and suggested changes in the proposed rule offered below arise from the AKC's active involvement with this issue during the legislative process as well as our desire to assure continued access to air shipment for animals, particularly purebred dogs.

2. Definition of the term "animal".

The proposed rule defines "animal" for the purpose of this rule as "any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States, or is being transported for the purpose of being sold as a pet in a family household in the United States". We believe this definition is unworkably broad, and goes beyond the intent of Congress in enacting Section 710 of AIR-21. We recommend that, for the purposes of this rulemaking, the term animal be defined as "dog or cat" and that it be limited to "any animal accepted by a carrier as checked baggage". We address in the next section the justification for restricting the reporting requirement to animals accepted as checked baggage.

Sec. 710(a) of AIR-21 specifically delegates to the Secretary of Transportation the authority to define the term "animal" for the purposes of this section. We believe that the statute did so specifically so that the Secretary could limit the application of Sec. 710 to specific species, and not all members of the animal kingdom. Otherwise, there would have been no reason to specify that the Secretary of Transportation define the term "animal".

Since there were no congressional hearings or debate on Sec. 710 of AIR-21, or of the free standing legislation from which it was derived, there is little legislative history to rely on to discern the intent of Congress in enacting this provision. However, there was a good deal of public debate about S. 1193, a bill introduced in the 106th Congress by Sen. Frank Lautenberg, that was added to the Senate version of AIR-21, and which gave rise to Sec. 710 of AIR-21 in the final version of the legislation. S. 1193 was known as the "Boris bill", so called for a dog named "Boris" which escaped from its kennel in an

aircraft cargo hold during flight, and escaped from the aircraft when the cargo hold was opened at its destination. As stated above, the AKC was involved in the public debate concerning S. 1193 during the 106th Congress. This debate centered on the shipment of dogs and cats as checked baggage. It did not focus on species such as fish, birds, insects, reptiles, etc.

The focus on dogs and cats is also reflected in a study conducted by the American Veterinary Medical Association Animal Air Transport Study Group commissioned by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture to make recommendation on the implementation of Sec. 710 of AIR-21. This report recommended that "animal" be defined as "a live dog or cat". (p.8)

There are also important practical reasons to limit the definition of "animal" for the purposes of this rulemaking. The obligations imposed on carriers by Sec. 710 can not reasonably be met with many species. In particular, Sec. 710 requires carriers to report on the cause of *any* loss, injury or death to an animal covered under Sec. 710. As a practical matter, it would not be possible nor economically feasible to determine the cause of death of many species covered by the unduly expansive definition of animal contained in the proposed rule, which would include fish, birds, insects, reptiles and all other animal species. The AKC is concerned that an unduly expansive definition of animal will add unnecessarily to the cost of transporting animals by air and/or will cause carriers to forego carrying animals altogether, as some "low cost" carriers already do. Such an outcome would adversely affect the traveling and animal-owning public and contradicts the intent of Sec. 710 of AIR-21.

Finally, we recommend that the FAA not limit the reporting requirements to dogs and cats which are household pets or intended for sale as household pets, but include all dogs and cats transported as baggage. Whether a dog or cat is a household pet or is intended as a household pet is impossible to determine at the time a carrier accepts a dog or cat for transport. Furthermore, if the FAA limits the application of the rule to checked baggage, as suggested by the statute and these comments, the practical effect will be to limit its application largely to pet animals.

3. The Reporting Requirement Should Be Limited to Animals Transported As Checked Baggage.

We believe that the language of Section 710 of AIR-21 as well as the limited legislative history of this provision and the public debate that occurred incident to its adoption makes clear that Congress intended this provision to apply to checked baggage, and not to animals shipped as cargo.

First, we note that the reporting requirements of Section 710 apply only to air carriers providing scheduled *passenger* air transport. They do not apply to cargo carriers. Clearly Congress would not have limited Section 710 to passenger carriers if it was intending the rule to apply to animals carried as cargo.

Second, the language of Section 710 in defining “air transport” clearly implies that Congress envisioned the provision as applying to animals *accompanying passengers*. The definition of “air transport” in Section 710 defines the term to refer to the period from the “check-in of the animal prior to departure *until the animal is returned to the owner ... at the final destination of the animal*”. [emphasis added] The reference to returning the animal at the final destination clearly implies that the shipper of the animal is accompanying it, i.e. checked baggage.

4. Reportable Incidents Should be Limited to Claims Made By Passengers or Shippers.

The proposed rule is not sufficiently specific as to what constitutes a reportable incident. As proposed, the rule requires carriers to report on “any incident involving the loss, injury or death of an animal during air transport”. Taken literally, this would require the carrier to inspect every animal shipment prior to acceptance to determine the condition of the animal and to inspect every shipment again at the time the animal is returned to the passenger at the final destination to determine if there was any changes in the animals’ condition. This imposes a positive obligation on carriers that we do not believe was intended by the statute and that will be excessively burdensome and costly. In particular, if our recommendation that the definition of “animal” be restricted to cats and dogs, and that the scope of reporting be restricted to checked baggage are not accepted, carriers could be faced with the obligation to count the number of live fish, baby chicks, toads and other species in shipments both at the beginning and the end of a shipment in order to determine the extent of loss, injury or death.

Taking our guidance from the statutory language regarding the reporting of incidents, which specifies that data on animal incidents be reported “in a manner comparable to other consumer complaint and incident data”, we recommend that reportable incidents be defined as loss, injury or death *reported to the carrier by the passenger or shipper*. This would eliminate the obligation of the carrier to make its own independent assessment of the status of the shipment before returning it to the passenger or shipper.

5. The Required Report Should Include the Name of the Passenger Checking In the Animal, or the Shipper and Receiver if the Rule is Extended to Cargo. The Terms “Owner” and “Guardian” Should Be Avoided.

The proposed rule refers to the “owner(s) and/or guardian” of the animal at proposed §119.72 (b)(4) and §119.72 (c)(2). These references are unclear and not related to the purpose of the rule. We recommend that the relevant person in both instances be the passenger who checked the animal in, or, if our recommendation that reporting be restricted to checked baggage is not accepted, the person surrendering the animal for transport and/or the person receiving the animal at the final destination. The ownership relationship of these persons to the animal are not relevant to the reporting requirement. Animals may or may not be traveling with their owners in any specific instance.

We recommend that §119.72 (b)(4) be changed to read “Identification of the person who surrendered the animal for check-in”.

We recommend that §119.72 (c)(2) be changed to read “... until the animal is returned at the final destination to the person surrendering the animal for transport.”

The term “guardian” with respect to an animal is a politically laden term that, in fact, has no specific meaning. It is not necessary for the FAA to step into the political controversy surrounding the term guardian, particularly when, as in this case, it will not necessarily identify the person of interest.

6. The Time Frame for Reporting Should be Increased From 15 Days To Up To 45 Days to Allow For Determination of the Cause of the Incident.

The proposed rule requires carriers to report incidents within 15 days of the end of the month to which the information applies, which would presumably be the month in which the incident occurred. For incidents occurring at, or near the end of a month, this could require the carrier to file the report within 15 days of the occurrence of the incident. However, the proposed rule also requires the carrier to determine the cause of the incident and to describe corrective measures to be taken in response to the incident. We do not believe a 15-day reporting deadline would be feasible in cases of serious injury or death. Such incidents are likely to require extensive investigation, possibly including necropsies and other laboratory studies, as well as considered judgments about the appropriate corrective actions. In some cases the information necessary to determine the cause of death and to formulate corrective actions may not be available within the

required time frame. We recommend that the FAA extend the reporting time frame from 15 to at least 30 days, or preferably 45 days.

7. Information About Specific Incidents Should Not Be Made Public By APHIS or the Department.

The proposed rule provides that reports of incidents shall be made to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) in a form and manner to be set forth by the APHIS. The rulemaking also specifies particular information which must be included in these reports to the APHIS. The AKC notes that the APHIS currently puts its facilities inspection reports and other similar information on-line. The AKC is concerned that the APHIS may also put air carriers' incident reports on-line. Putting on-line the detailed information required by the FAA to be reported to the APHIS will violate the privacy rights of air travelers and shippers of animals which may be involved in an incident. Therefore, by these comments the AKC wishes to express its objection to APHIS, the FAA, or any other agency putting individual incident reports containing personal information on-line or otherwise making this information about specific incidents available to the public without the consent of the individual making the incident report.

We note that the AIR-21 addresses this issue, and provides only that the Secretary of Transportation shall publish data on incidents and complaints "*in a manner comparable to other consumer complaint and incident data*". [emphasis added] We believe that it was the intention of Congress that publication include summary statistical information such as the number of incidents and their nature, but not that information about individual passengers or shippers be disclosed.

8. The FAA Was Correct in Not Including Training Requirements In This Rulemaking.

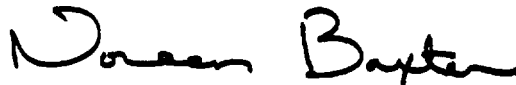
Sec. 710 of AIR-21 also addresses the training of air carrier employees. Specifically, it requires that the Secretary "work with air carriers to improve the training of employees with respect to the air transport of animals and the notification of passengers of the conditions under which the air transport of animals is conducted." Some commenters on the proposed rule have criticized the FAA for not including in the proposed rule specific regulations addressing the training of air carrier personnel.

The AKC believes the FAA was correct in not including such provisions in this proposed rule. We note that the statute uses the loose terminology "work with air

carriers", suggesting that precise rules and regulations, other than those already in existence, are not required. We note also that the American Veterinary Medical Association Animal Air Transport Study Group, which addressed the issue of air carrier training needs, did not call for changes in or increased regulation, and that the FAA is developing an Advisory Circular for carriers addressing the air transport of animals. We believe these efforts are fully within the spirit of Sec. 710 of AIR-21 and will address the needs for improved training of air carrier employees.

The American Kennel Club appreciates the opportunity to make the above comments on the FAA's proposed rule making. We will be happy to further elaborate on any of the comments above, and to work with the FAA to implement positive and productive measures for improving the safety of air transport for animals while assuring the public access to air transport for their animals.

Sincerely yours,

A handwritten signature in black ink that reads "Noreen Baxter". The signature is written in a cursive, flowing style.

Noreen Baxter
Vice President,
Public Education and Legislation